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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

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No. [redacted]

LARRY ROBERT EDDINGTON, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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May 15, 1964.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The petitioner, Larry Robert Eddington, prays that a writ of certiorari issue to the United States Court of Appeals for the Seventh Circuit.

Opinions Below

The District Court for the Southern District of Illinois (Southern Division) entered no opinion, petitioner having been convicted in that court, following a jury trial, of (1) a violation of the Mann Act, 18 U.S.C. 2421, and (2) of conspiracy to violate that statute, 18 U.S.C. 242. (R. 24).[1] The

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[1] References herein to the original record are designated as "(R.)," and as "(App.)," when reference is made to the petitioner's appendix in the Court of Appeals, and as "(G. App.)," when made to respondent United States' appendix in that court.

District Court denied petitioner's motion for directed verdict without written opinion (R. 21). The opinion of the Court of Appeals is not yet reported and is attached to this petition as Appendix A.

Jurisdiction

The judgment of the Court of Appeals was entered on February 18, 1964. A timely motion for rehearing was denied on March 23, 1964. Upon application of the petitioner, on April 22, 1964, Mr. Justice Clark, Circuit Court Justice for the Seventh Circuit, ordered that the time for filing a petition for writ of certiorari be extended to and including May 15, 1964.

Jurisdiction of the District Court was based on 18 U.S.C. 3231. Jurisdiction of the Court for Appeals rested on 28 U.S.C. 1291. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Question Presented

This case presents for decision solely the question of whether the Court of Appeals erred in sustaining the trial court's denial of the petitioner's motion for a directed verdict on the first count, in that the evidence did not justify his conviction under 18 U.S.C. 2421, since the interstate transportation which furnished the gravamen of the indictment and the conviction thereunder was part of a round trip made for innocent purposes.[2]

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[2] Petitioner abandons any claim for review in this Court of his conviction under another count charging him with unlawful conspiracy in violation of 18 U.S.C. 2424.

Statute Involved

The statute involved in this case is the Mann Act, 18 U.S.C. 2421, which provides:

> Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or
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> Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States—
>
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Statement of the Case

1 *Procedural History of the Litigation.* The petitioner was tried upon two indictments which were consolidated for trial. The first contained three counts, but the third count was dismissed prior to trial. The first count of the first indictment charged the petitioner with the transportation, on July 8, 1961, of a female person from Koontz Lake, Indiana, to Quincy, Illinois, for purposes of prostitution, etc., in violation of 18 U.S.C. 2421. The second count charged the transportation of the same person on July 18, 1961, from Quincy, Illinois, to South Bend, Indiana, for like purposes; also in violation of Section 2421 of Title 18.

The second indictment contained one count. It charged that the petitioner with conspiring with a woman, who was named as a co-conspirator but not as a co-defendant, to keep, maintain, control, support and harbor in a house at Quincy, Illinois, during June and July, 1961, for purposes of prostitution, the same female person referred to in the first indictment, an alien woman, within three years after the latter had entered the United States and failing to file the statement required by 18 U.S.C. 2424, in violation of 18 U.S.C. 371.

The petitioner was tried before a jury. He was found guilty upon the first count of the first indictment but adjudged not guilty on the second count thereof. Petitioner was also found guilty on the conspiracy charge. He was sentenced to imprisonment for seven years, five years for the conviction under the first indictment and two years on the conspiracy conviction. Review of the conspiracy conviction is not sought in this Court. The sole issue presented here, as previously set out in this petition, was raised in the trial court by timely motion for a directed verdict of

acquittal at the conclusion of the respondent's case. It was raised, argued, and decided in the appeal which petitioner took to the Circuit Court of Appeals for the Seventh Circuit.

2. *The Facts Surrounding the Conspiracy Conviction.* As already stated, petitioner does not petition for review by this Court of his conviction for conspiracy to violate 18 U.S.C. 2424. Although the petitioner defended against this charge and still protests his innocence of it, the Court of Appeals has held that the "jury was justified in finding that the conspiracy had been proved." In the judgment of petitioner's counsel, there was sufficient evidence in the record on which the jury might have relied in reaching an adverse verdict. Accordingly, no perceivable ground for grant of certiorari to review this conviction appears to exist. However, for a fuller understanding of the issue that is raised by this petition, we set forth briefly some of the facts which furnished the background for the jury's verdict on the count of conspiracy.

The victim of the alleged harboring in violation of 18 U.S.C. 2424, was an eighteen year old alien girl, who came to this country from Ireland in 1960. In South Bend, Indiana, she met and fell in love with the defendant, a married man, a status of which she was aware at the time (App. 64). She followed him from Indiana to Bloomington, Illinois, where he had taken over the operation of a restaurant. She stayed with him for a day or two in that city, when he advised her that he was in trouble over some shooting in Bloomington, and that he did not want her to go back to South Bend. He also told her he knew of a place for her to stay (G. App. 6).

Following conversations at Bloomington about prostitution, where, she said, "everybody was talking about the

money that girls made in prostitution" (G. App. 6), the petitioner gave the girl the telephone number of one Jackie Rogers, also known as Ruth Lehne, in Quincy, Illinois. Rogers was named as a co-conspirator but not as a co-defendant. He advised her to call Miss Rogers, and also told her what to say on the telephone (G. App. 17). Miss Rogers ran a house of prostitution in Quincy. When the girl called, the latter told her she could stay at her place. The petitioner and the young woman then went to Quincy, where they stayed at a motel near the house of ill repute operated by Miss Rogers. She then went alone in a cab to the madam's establishment.

The evidence was in conflict as to whether or not the girl was free to leave her new quarters. On at least one occasion, she left to go to South Bend and returned by train alone (App. 10). She conceded that she didn't need a key to leave, was left alone frequently, was free to go down town or to run errands, and that nobody guarded her or put restraints on her freedom of movement (App. 15).

There also were conflicts between the testimony of the girl and that of the madam as to whether or not her earnings were given to the petitioner by the madam. The madam stated that she knew the petitioner, that he had been to her place twice before, once as a customer, but she had never had any conversations or made any arrangements with the defendant for the girl to go to work in her establishment (App. 5). The girl, on the other hand, testified that she gave all her earnings as a prostitute to the petitioner and that during the period in which she was engaged in that activity she was subjected to physical abuse by him and was afraid of what he might do to her (G. App. 11).

3. *Facts Pertinent to the Conviction Under 18 U.S.C. 2421.* After the young Irish girl had been at Miss Roger's place for about three weeks, she called the plaintiff to tell him that she was leaving. The next morning he came and picked her up in his car (G. App. 8). She did not tell the madam that she was not going to return to the establishment. She left some of her things there "that [she] . . . had bought for . . . [herself]" when she departed (App. 15).

Petitioner and the young lady proceeded from Quincy, Illinois, to Koontz Lake, Indiana, a resort area where they stayed for approximately one week (App. 7). They rented a cottage from the owner of cottages which were "rented on a weekly basis as . . . resort or vacation cottage [s]." (App. 6). Other friends of the couple were at Koontz Lake. On cross-examination, the girl testified that they went there "for a lark;" she did not go there "to practice prostitution;" nor did she (App. 11). While at Koontz Lake, the couple and their friends apparently did the things usually enjoyed by people on vacation, including swimming, fishing, water skiing, and boating, etc. As far as the madam back in Quincy knew, the girl was going for a week and intended to return (App. 15).

The girl testified that at Koontz Lake she argued with the petitioner about going back to Quincy to resume her activity as a prostitute and the defendant physically abused her, and during one of their arguments on the matter, threw her in the lake (G. App. 32). It was also her testimony that when she left Quincy she intended to cease her activity as a prostitute and go to her home in South Bend, Indiana. However, as a result of a phone call by the petitioner, she claims he was told by his lawyer that he should not return to South Bend because there was a warrant there

for his arrest (G. App. 8). Thereupon, she testified, petitioner took her to Koontz Lake.

Following the couple's stay at Koontz Lake, the petitioner brought her back to Miss Roger's place in Quincy, where she resumed prostitution (App. 7-8). Shortly thereafter, she left alone to go to South Bend and then returned alone, by train, after visiting her sick mother. Upon her return, she again resumed prostitution at Miss Roger's establishment (App. 10). She broke up with the petitioner in December, 1961 (App. 11). She continued prostitution in South Bend thereafter (App. 11). One year later, she was charged with and convicted of prostitution in Chicago, Illinois, at a time when she had completely severed her relationship with the petitioner (App. 10, 17).

Reasons for Granting the Writ

Certiorari is sought by the petitioner on the grounds that his conviction in the trial court of a violation of 18 U.S.C. 2421 and the affirmance thereof by the United States Court of Appeals for the Seventh Circuit, is (1) contrary to the decision of this Court in *Mortensen* v. *United States*, 322 U.S. 369, and (2) conflicts with a decision of the Second Circuit in *United States* v. *Ross*, 257 U.S. 292 (C.A. 2, 1958). Nor, do we believe that grant of certiorari is precluded in this case by application of the "Two-Court Rule," *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U.S. 175, 182, inasmuch as petitioner's conviction for violation of 18 U.S.C. 2421 is devoid of evidentiary support. *Thompson* v. *City of Louisville*, 362 U.S. 199; *Washington* v. *United States*, 357 U.S. 348, reversing 253 F.2d 913 (C.A. 7, 1958). In more detail, petitioner's reasons are:

A. *Petitioner's Conviction Runs Contrary to the Holding In Mortensen v. United States.* It is quite true that this

Court, beginning in *Caminetti* v. *United States*, 242 U.S. 470, and extending at least through *Cleveland* v. *United States*, 329 U.S. 14, has given the Mann Act a statutory interpretation of comprehensive sweep and, we believe it fair to say, of somewhat broader coverage than the framers of that statute originally may have intended it to enjoy. Levi, An Introduction to Legal Reasoning, (Univ. of Chicago Press, 1949), pp. 24-38. As one knowledgeable commentator has observed in the context of the Mann Act, "a statutory interpretation once placed upon an Act will in general hold its grip on the Act."[3] *Cleveland* v. *United States*, 329 U.S. 14, 18. Nevertheless, there have been occasional brakes placed by this Court on the otherwise broad construction which it otherwise has been willing to afford the Mann Act, whatever the original legislative purposes which underlay its enactment. Such a restraint may be detected in *Mortensen* v. *United States*, 322 U.S. 369.

In that case, petitioners operated a house of ill repute in Nebraska. They were husband and wife. In 1940, they took an automobile trip to Utah in order to visit Mrs. Mortensen's parents. Two of their working prostitutes asked to be taken along for a vacation and the Mortensens agreed to their request. The party visited Yellow Stone National Park and then went on to Salt Lake City, where they all stayed at a tourist camp for four or five days. The girls went to shows and toured other parts of Salt Lake City. The party then returned in petitioner's automobile to Nebraska. On their arrival, they went immediately to petitioners' house of ill fame, whereupon the girls resumed prostitution.

The jury conviction of the Mortensens was reversed by this Court in a five to four decision. The late Mr. Justice

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[3] Lenhoff, Comments, Cases and Materials on Legislation (Dennis & Co., Inc., 1949), p. 719.

Murphy delivered the majority opinion. As he put it, "the primary issue . . . is whether there was any evidence from which the jury could rightly find that petitioners transported the girls from Salt Lake City [the last leg of the vacation trip] to Grand Island [Nebraska] for an immoral purpose in violation of the Mann Act." 322 U.S. 369, 373. Noting that this Court has "never hesitated to examine a record to determine whether there was any competent and substantial evidence fairly tending to support the verdict,"[4] the majority concluded that there was "a complete lack of relevant evidence from which the jury could properly find or infer" that the petitioners had transported the prostitutes in interstate commerce for any of the illegal purposes condemned by 18 U.S.C. 2421. The majority held that, while it was clear that the petitioners' anticipated that the girls would resume prostitution on their return from their vacation trip, this did not "justify an arbitrary splitting of the round trip into two parts so as to permit an inference that the purpose of the homeward journey to Grand Island was criminal." Finding that there was no evidence of any change in the purpose of the trip, which was innocent when it began, the majority concluded that the trip "remained so until it ended." 322 U.S. 369, 375.

The majority ended with the acknowledgment that some of the gloss placed upon the Mann Act by judicial interpretation may have justified the fears held by members of the Congress which passed the statute, that the law would be broadly interpreted to embrace activities not contemplated in its enactment. They said:

> We do not here question or reconsider any previous construction placed on the Act which may have led the

[4] 322 U.S. at 374.

federal government into areas or regulation not originally contemplated by Congress. But experience with the administration of the law admonishes us against adding another chapter of statutory construction and application which would have a similar effect and which would make possible even further justification of the fear expressed at the time of the adoption of the legislation that its broad provisions "are liable to furnish boundless opportunity to hold up and blackmail and make unnecessary trouble, without any corresponding benefits to society."[5]

This Court again applied the rule of the *Mortensen* case in *Oriolo* v. *United States*, 324 U.S. 824, summarily reversing the Third Circuit, which had held that evidence showing that a woman who worked for the defendant as a prostitute in Pennsylvania, whose railroad ticket back to Pennsylvania had been paid by the defendant after both had been arrested while on an automobile trip to New Jersey, the defendant then informing the woman that she would have to resume the business of prostitution in Pennsylvania in order to enable him to pay the New Jersey fine, sustained defendant's conviction under the Mann Act. The majority found that although the trip from Pennsylvania to New Jersey was for the purposes of vacation, there "was evidence of a change in the purpose of the trip during the course" of it. That change in purpose they found in defendant's statement to the woman that she would have to resume prostitution when she returned to Pennsylvania so that he might be able to pay the fine imposed in New Jersey. 146 F.2d 152 (C.C.A. 3, 1945). This "change in purpose" the dissenting judge, on the other hand, regarded

[5] 322 U.S. at 376.

as "too trivial" to support the conviction in light of the *Mortensen* case, *supra*.[6]

So too, does the evidence in this case establish that the trip to Koontz Lake on which the girl accompanied the defendant was exclusively for innocent, vacation purposes (App. 6, 7, 11, 15). The Government contends that there was a "change in purpose," however, based primarily on the girl's uncorroborated statement that the defendant and she argued about whether she was to return to prostitution after the vacation trip was over (G. App. 32). As in *United States* v. *Oriolo*, *supra*, in which the Court appears to have agreed with dissenting Judge Biggs, the evidence supporting an alleged "change in purpose" is too insignificant to support defendant's conviction in the light of this Court's authoritative opinion in *Mortensen*.

B. *The Decision Below Conflicts With A Decision of the Second Circuit.* In *United States* v. *Ross*, 257 F.2d 292 (C.A. 2, 1958), the evidence showed that the defendant knowingly transported a prostitute, of whose occupation he was well aware and with which he had some significant if not criminal connection, from New York City to Newark, New Jersey and back to New York again. The defendant and the girl had rented an apartment in Newark which they occupied on weekends coming over together from New York City. He was aware that upon their return to New York, the girl would resume her occupation as a prostitute. Defendant was convicted in the trial court for violation of 18 U.S.C. 2421, in the unlawful interstate transportation of the girl "from Newark, New Jersey to New York, New York," 257 F.2d 292.

The Second Circuit reversed, following *Mortensen* and

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[6] 146 F.2d 152, 154-55.

Oriolo, supra. It noted that this Court in considering the "precise point" had held "that the trip to and fro must be taken as a unit. It cannot be split up between two trips." Since the defendant and the girl had come to New Jersey for a weekend of recreation and refreshment, the Second Circuit was of the view that "the return trip cannot be separated from but remains an integral part of a single unitary undertaking." 257 F.2d 292, 293.

We do not regard the fact situations presented in *Ross* and in the instant case to be fairly distinguishable. The Second Circuit in *Ross*, correctly we believe, applied the law flowing from this Court's controlling decision in *Mortensen* v. *United States*, 322 U.S. 369. Conversely, the Circuit Court of Appeals for the Seventh Circuit in this case has misapplied it in affirming defendant's conviction. A square conflict exists between the two Circuits, which this Court should resolve in the light of its holding in *Mortensen*.

C. *The Conviction Is Without Substantial Evidence to Support It.* Petitioner concedes the intimidating force of the so-called "Two-Court Rule," pursuant to which this Court ordinarily will not grant certiorari "to review evidence or to discuss specific facts." Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States (Wolfson & Kurland Ed., 1951), § 333; *United States* v. *Johnson*, 268 U.S. 220, 227. On the other hand, the Court has not shied away from granting certiorari to review the sufficiency of the evidence in criminal cases where the decision below is so totally devoid of evidentiary support as to result in gross unfairness, approaching or reaching unconstitutionality. *Thompson* v. *City of Louisville*, 362 U.S. 199; *Garner* v. *Louisiana*, 368 U.S. 157, 163.

This Court most frequently has invoked this exception to the "Two-Court Rule" in the area of civil rights, now very prominent in the public eye and so often involved in many of the cases currently reaching the Court. Nevertheless, we do not understand the principle to be one confined exclusively to so-called civil rights cases. For example, *Thompson* v. *City of Louisville, supra,* involved the question of whether loitering and disorderly conduct charges were so lacking in evidentiary support as to render the conviction in that case unconstitutional. Again, the Court applied the exception in *Washington* v. *United States,* 357 U.S. 348, where it reversed, without opinion, a conviction upheld by the Seventh Circuit, 253 F.2d 913 (C.A. 7, 1958), of a violation of the Federal narcotics laws, "because of insufficiency of the evidence."

The unlawful transportation of a female person in violation of 18 U.S.C. 2421 is no doubt an unsavory crime; however, it neither exceeds or falls short of the evil represented by the sale of narcotics. In any event, this Court has never permitted the nature of the particular crime, review of the conviction of which is sought here, to influence it either in granting or denying certiorari. The despicable, as well as the racially discriminated or the socially down-trodden, are entitled to maintain that their conviction, whether of a breach of a loitering or disorderly conduct statute, a trespass ordinance, the narcotics acts, or the Mann Act, be grounded on substantial evidence in the record. Where it is not, the conviction should be set aside. On the grounds stated in this petition, no such evidence may be found in this record.

Conclusion

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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May 15, 1964.

APPENDIX A

February 18, 1964

Before SCHNACKENBERG, KNOCH and KILEY, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* Larry Robert Eddington, defendant, has appealed from his conviction and sentence on count I of indictment No. 6209 charging that on July 8, 1961 he transported Martha Barber from Koontz Lake, Indiana to Quincy, Illinois, for the purposes of prostitution, debauchery and other immoral purposes, in violation of 18 U.S.C.A. § 2421, and on count I of indictment No. 244, charging conspiracy.

The conspiracy count alleged that defendant conspired with Ruth Lehne, also known as Jackie Rogers, to keep in a house in Quincy, Illinois, for the purpose of prostitution, Martha Barber, an alien woman, within three years after she had entered the United States from a country party to the arrangement adopted in 1902 for the suppression of white slavery traffic, and by failing to file a statement with the proper official giving the facts as to her entry and alleging that the woman's procuration to come to this country was within the knowledge of defendant, in violation of 18 U.S.C.A. § 2424.

Also charged, in violation of 18 U.S.C.A. § 371, were overt acts committed in furtherance of the conspiracy, including the receipt by defendant from Martha Barber of the proceeds of acts of prostitution at said house.

Defendant was sentenced to confinement for five years in case No. 6209, and two years in No. 6244, to be served consecutively.

1. In case No. 6209, prior to trial defendant made a motion for a bill of particulars under 18 U.S.C.A., rule 7 (f), in which he asked detailed information as to (1) the route, (2) mode or means of transportation, (3) places where Barber intended to or did commit acts of prostitution, (4) names and addresses of any witnesses "the government intends to use as intent witnesse", together with any state-

ments which the government intended to use, (5) the names and addresses of other persons who had anything to do with the alleged transportation, (6) Barber's prior criminal record, if any, (7) as well as such record of any other government witnesses, and (8) the names and addresses of any person whose statement to the government "contradicts, negates, impeaches, limits or refutes the charges laid in the indictment."

The motion was allowed in part and denied in part and defendant now claims error in respect only to the "refusal to reveal identity of intent witnesses". While there are rules providing for discovery in criminal cases, such as 18 U.S.C.A. rule 16 and 17 (c), they have no application to a request by a defendant for the identity of witnesses to be called by the prosecution. This case did not involve the use by the prosecution of an informer, such as did *Roviaro* v. *United States*, 353 U. S. 53, to which defendant makes reference in his brief but admits that it is not precisely in point. *Roviaro* involved the disclosure of the identity of an informer. The obligation of the government to disclose the identity of its witnesses generally has not been required by the courts.

Actually, upon the trial, the testimony of two officers from South Bend was offered by the prosecution for the purpose of corroborating the testimony of Barber. The purpose of the government was to show by various circumstances that Barber had on several occasions been beaten by defendant and cut with a knife in March or April, 1962, because she threatened to cooperate with federal authorities. So the government introduced the testimony of detective John F. Pajor of the South Bend police department. He said that on April 23, 1962, he investigated a complaint for assault and battery, went to Barber's apartment and found bruises and black and blue marks about her left ear. Officer Frank Vellner, who was also there, saw bruises about Barber's ear and shoulder. He took photographs thereof.[1]

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[1] These were introduced at the trial as government exhibits Nos. 4, 5, 6 and 7.

The government's purpose in offering the foregoing evidence was to show a continuing harassment of Barber by defendant in order to halt her cooperation with federal authorities and keep her from testifying. The government points out that the importance of such evidence against defendant was recognized even by him, because, under date of October 4, 1962, he procured from her a sworn statement purporting to retract her testimony before the grand jury which indicted him. This was offered in evidence by the defense.

The evidence of the South Bend police officers was properly admitted on the theory that it tended to show the forcible domination of defendant over Barber and, therefore, contributed to the conclusion, which the jury could have reached, that Barber did not originally voluntarily enter the house of prostitution and was not free to go and come while there.

2. Furthermore, we believe that the government was properly permitted to introduce, as additional proof of intent by defendant, the testimony of Geraldine Sue Campbell, 23 years old at the time of the trial, who prostituted herself to defendant in November, 1960 and, beginning in January 1961, worked at her profession, giving him her earnings, after paying her rent therefrom, until some time in March, 1961. In the meantime she was pregnant and defendant arranged an abortion for her in February, 1961, and thereafter she became "real sick" and broke off relations with him. All of this evidence was admitted without objection from defense counsel.

It is defendant's contention that the acts testified to by Campbell took place some 5 or 6 months before the date of the offenses herein involved and thus were remote in point of time.[2] The government points out that the transportation charged in the indictment here occurred on July 8, 1961, which is within four months of March 1961, when Campbell was still working as a prostitute for defendant.

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[2] At the close of Campbell's direct examination, defense counsel moved that her testimony be stricken on the ground of remoteness. The objection was overruled.

Both sides rely upon *United States* v. *Krulewitch*, 2 Cir., 145 F. 2d 76 (1944). There it was recognized as a general rule that, if evidence is relevant to prove one crime, it does not become inadmissible because it also proves another. Moreover, at 80, the court there said:

> "The other question is of the admission of a part of the testimony of one, Mary Smith—also a prostitute—who swore that the accused had lived off her earnings while she was so engaged. So far, her testimony was competent upon the issue of his purpose in taking Joyce to Florida, for it fell within the well-established doctrine that other instances of similar conduct are competent to prove intent (or purpose) upon the occasion for which the accused is on trial. * * *"

The court pointed out, by contrast, that, insofar as Mary Smith's testimony related to defendant's rape of her, that fact did *not* tend to prove that he was living off Joyce's earnings. The Campbell situation existing in the case at bar justifies an application of the *general* rule announced in *Krulewitch*.

To the same effect is *Neff* v. *United States*, 8 Cir., 105 F. 2d 688 (1939), a prosecution for a similar offense as that involved in this case. The court held, at 692, that there was no abuse of discretion on the part of the trial court in the admission of evidence tending to show a promiscuous disregard of the chastity of young girls which, if established, would have a direct bearing upon the purpose and intent wtih which the interstate transportation there involved was made.

To the same effect is *United States* v. *Pape*, 2 Cir., 144 F. 2d 778 (1944),

3. At the close of the government's case, defendant moved the court to enter a directed verdict of acquittal, which was denied, on the ground (now reasserted in this court) that the trip from Koontz Lake, Indiana to Quincy, Illinois, was part of a round trip made for innocent purposes. Defendant relies on *Mortensen* v. *United States*, 322 U. S. 369. While we have relied on the *Mortensen* case when the evi-

dence justified its application, *United States* v. *Hon*, 306 F. 2d 52, it seems clear that the inquiry in the case at bar relates to the purpose of the transportation of Barber from Koontz Lake, Indiana, to Quincy, Illinois. Her destination in Quincy was a place to which she was introduced by defendant and where the jury was justified in finding he intended returning her. The lack of an innocent purpose for that journey has been established by the verdict of the jury, which has been upheld by the district court. *Mortensen* is not applicable here. We believe that *United States* v. *Nichol*, 7 Cir., 323 F. 2d 673 (1963) does apply. There was evidence that, when Barber left Quincy to go to Koontz Lake, she intended to "leave completely", and did not intend to go back to Quincy, and that she thought Lehne knew that she was leaving and not coming back. When she left Quincy she did not leave her belongings, except, "the dresses I had to wear there". In Koontz Lake she quarreled with defendant because she did not want to go back to Lehne's. She was afraid of defendant.

It is obvious that the jury would have been justified in believing that the trip from Koontz Lake to Quincy was for the independent purpose of prostitution and was not of the innocent character with which defendant's counsel would clothe it.

4. Defendant argues that the proof of conspiracy did not meet the requirements necessary to establish guilt. We disagree.

The evidence tended to show that defendant and Lehne, the alleged co-conspirators, in several ways acted in unison to place Barber in Lehne's house of prostitution. Both conspirators knew that she was an alien who had not been in this country for a period of three years. The jury was justified in finding that the conspiracy had been proved against both the conspirators.

For all of these reasons, the convictions and sentences from which this appeal has been taken are affirmed.

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1118

LARRY ROBERT EDDINGTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 328 F.2d 760.

JURISDICTION

The judgment of the court of appeals was entered on February 18, 1964. A petition for rehearing was denied on March 23, 1964. On April 22, 1964 Mr. Justice Clark extended the time for filing a petition

for a writ of certiorari to and including May 15, 1964 and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence of petitioner's purpose in transporting a girl in interstate commerce to a house of prostitution was sufficient to sustain a conviction under the Mann Act.

STATEMENT

After a trial by jury in the United States District Court for the Southern District of Illinois, petitioner was convicted of transporting one Martha Barber from Koontz Lake, Indiana, to Quincy, Illinois, for the purposes of prostitution in violation of 18 U.S.C. 2421.[1] He was sentenced to imprisonment for five years. The court of appeals affirmed.

The government's evidence, insofar as pertinent here, may be summarized as follows:

Martha Barber, an 18-year-old girl who came to the United States from Ireland in 1960, met petitioner in South Bend, Indiana, in March 1961 and

[1] Petitioner was also convicted, under a separate indictment which had been consolidated for trial with the substantive charge, of conspiracy to harbor an alien woman for the purpose of prostitution without filing the statement required by 18 U.S.C. 2424. This conviction (for which he was sentenced to a two-year term of imprisonment to run consecutively with the sentence imposed for the substantive offense) is not challenged.

began dating him frequently (Pet. 5; G. App. 4-5, 15; Tr. 64).[2] In May 1961, petitioner went to Bloomington, Illinois, to operate a restaurant and asked Miss Barber to join him there (G. App. 5). She gave up a job as a secretary in South Bend and followed petitioner (G. App. 16). A day or two after her arrival in Bloomington, petitioner advised her that he had to leave Bloomington because police were looking for him in connection with a shooting (G. App. 17). He said that he did not want her to return to South Bend and that he would find a place for her to stay while he was at South Bend (G. App. 16-17). Petitioner then gave the girl the telephone number of a woman in Quincy, Illinois, whom she was to call and inquire if she could stay there for a week (G. App. 17, 33).[3] Petitioner, a friend, and Miss Barber then traveled by automobile to motel in Quincy, where petitioner told her that she was going to be a prostitute and would have to stay in the house of prostitution for one week (Tr. 40; G. App. 17, 18). On the following morning Miss Barber traveled by taxicab to the house of prostitution (G. App. 18; Tr. 72). She then began to engage in prostitution (G. App. 19).

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[2] "G. App." refers to the Government's Appendix in the court of appeals. "Tr." refers to the transcript of trial proceedings which, together with a transcript of the court's instructions, are being lodged with the Clerk.

[3] Miss Barber testified on direct examination that petitioner discussed prostitution with her in Bloomington and told her that she would have to stay at the house of prostitution in Quincy for only one week (Tr. 42). On cross-examination, however, she testified that she did not know the nature of the establishment in Quincy until the party had arrived in that city (Tr. 70-71).

During the first week at the house in Quincy, Miss Barber was told that she would not be permitted to leave unless her "boyfriend" came to take her away (G. App. 18, 31-32). After three weeks, she called petitioner and told him that she would leave if he did not come and get her. Petitioner came the following morning with his friend and picked her up (G. App. 8). Miss Barber testified that it was her intention to leave the house permanently, although she did not recall exactly what arrangements she had made upon leaving (G. App. 20, 32).

Petitioner drove Miss Barber to Koontz Lake, Indiana, where they rented a cottage (G. App. 8-9). During a week spent there in the company of petitioner's friends, petitioner urged Miss Barber to resume her activities as a prostitute. When Miss Barber resisted this suggestion, petitioner abused her physically, once even throwing her into the lake (G. App. 9-10, 32). Out of fear of petitioner (G. App. 32), Miss Barber permitted him to drive her back to Quincy where she resumed her activities as a prostitute (G. App. 10).

ARGUMENT

Relying on *Mortensen* v. *United States*, 322 U.S. 369, 375, petitioner argues that his transportation of Miss Barber from Koontz Lake to Quincy was merely the return leg of a vacation trip, for which he could not be convicted under the Mann Act. The testimony of Miss Barber, which the jury apparently believed, demonstrated, however, that she left Quincy

with no intention of returning to a life of prostitution, and that petitioner used the week at Koontz Lake to persuade her by various means, including physical abuse, to return to the house of prostitution in Quincy. Hence, there was sufficient evidence for the jury to conclude that the trip from Quincy to Koontz Lake and then back to Quincy was not, as in *Mortensen*, "innocent recreation and a holiday" in the form of an "innocent round trip." 322 U.S. at 375. In this case, unlike *Mortensen*, there was a definite "change in the purpose of the trip during its course." *Ibid.* The jury could reasonably have concluded that the trip to Koontz Lake was Miss Barber's escape from a life of prostitution and her return was as a captive being forced, against her will, to resume the immoral practices which the statute intended to prevent.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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